

Customer No. 25280

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REMARKS

Claims 1, 3, and 36 - 39 have been amended. No additional claims have been canceled. New claim 143 has been added. Claims 1, 3 - 51, 54, 55, 57 - 85, 89 - 100, 103 - 106, 109 - 112, 114, 119, 122, and 143 remain for examination. It is respectfully submitted that all remaining claims now stand in condition for allowance. Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

As regards all remaining claims, the previous rejections are in each case based in whole or in part upon the combination of U.S. Patent 4,522,857 to Higgins in view of U.S. Patent 5,610,207 to De Simone. More specifically, as best understood, the fundamental rationale for all rejections is that it would have been obvious to one of skill in the art to substitute a rebond foam product as taught by De Simone '207 for the foam layer in Higgins '857.

As will be noted in an Examiner's Interview Summary, the undersigned had a personal interview with the Examiner relative to this application (as well as a number of other related applications) on September 15, 2004. During the interview, the undersigned showed the Examiner carpet samples with rebond foam cushions, and discussed the Higgins '857, Higgins '968, and De Simone '207 references, the history and development of carpet tiles, why it would not have been obvious to one of skill in the carpet tile art to use rebond foam in a carpet tile, and several features and embodiments including the flame laminated and hot melt laminated embodiments, foam density, cut, slit or peeled foam, foam ship size, and a supplemental declaration.

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As described on pages 42 and 43 of the present application, rebond foam pads for broadloom carpet were known. Such rebond foam pad typically had large chip sizes, low density, non-uniform density, was frangible, fragile, and relatively thick. Also, such rebond foam pads were not used in preformed carpet tiles prior to the invention described in commonly owned U.S. Patent Application 09/721,871 and as described in the present application.

In addressing this same rejection in an earlier Amendment, Applicants submitted a first declaration of Richard L. Kilpatrick who holds the position of Director of Development for the company which developed and manufactured the product set forth in the primary reference. This entity Milliken & Company also owns the present application. Applicants also submit herewith a second or supplemental declaration of Richard L. Kilpatrick. A copy of this supplemental declaration is appended for incorporation into the present record.

As described in the declarations, it would not have been obvious for one of ordinary skill in the carpet tile art to use rebond foam in a cushion back carpet tile.

Milliken & Company had two rebond foam cushion back carpet tile products on the market, the Legato™ carpet system and the Tesserae™ carpet system. The Legato carpet tiles have a special interlocking wave shape while the Tesserae carpet tiles are square. At least Milliken's Legato™ carpet system (sold in Home Depot stores) enjoyed commercial success.

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It was surprising and unexpected that a polyurethane rebond foam would work in a cushion back carpet tile, much less a carpet tile rated for commercial use. It took many years for Milliken to develop a performing carpet tile which has a similar look and feel as residential broadloom.

As set forth, for example, in pages 87 - 90 of the present application, cushion back carpet tile samples having the same construction as Milliken Comfort Plus® cushion back carpet tiles with the exception of rebond foam (flame laminated to fiber- glass and felt) rather than filled polyurethane foam (in-situ laminated to the fiberglass and felt) (same face construction, same layer construction) were tested and surprisingly and unexpectedly found to have performance characteristics at least on par with filled polyurethane cushion back carpet tiles and to be rated for commercial use.

As one of skill in the art, Mr. Kilpatrick has concluded that contrary to the position taken by the Office Action, one of skill in the art would not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with the rebond foam materials from De Simone '207.

In addition to the deficiency in the teachings of De Simone '207, it is also respectfully noted that the art relied upon does not teach or suggest all elements of the claims. In particular, since the primary reference incorporates a carrier layer 26 between the foam and the adhesive, it is respectfully submitted that the claim recitations calling for the adhesive to contact the upper side of the rebond foam cushion layer cannot be present.

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The other art relied upon in addition to Higgins '857 and De Simone '207 fails to make up for the lack of teaching in De Simone '207.

Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

CONCLUSION:

For the reasons set forth above, it is respectfully submitted that all remaining claims stand in condition for allowance.

In the event that any issue remains unresolved, the Examiner is encouraged to contact the undersigned attorney in the hope that such issue may be resolved in an expedient and satisfactory manner.

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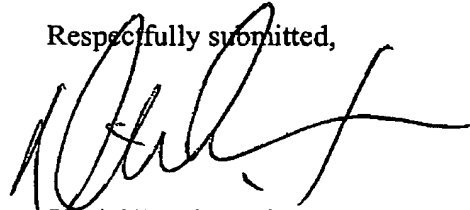
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To any extent required, a petition for an extension of time is hereby made and authorization is provided to deduct any fee necessary for the acceptance of this paper from Deposit Account 04-0500.

January 24, 2005

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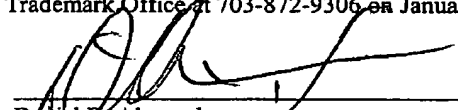
Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence, along with a Request for Extension of Time and an RCE, is being facsimile transmitted to the United States Patent and Trademark Office at 703-872-9306 on January 24, 2005.


Daniel R. Alexander
Attorney for Applicant(s)